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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CLEAR-VIEW TECHNOLOGIES, INC., a
California Corporation,

Plaintiff,

v.

JOHN H. RASNICK, J. BASIL MATTINGLY,
WILL RASNICK and PARKER MATTINGLY,
individuals residing in Kentucky; and M&R
SOLUTIONS, LLC, a dissolved Kentucky
Corporation.

Defendants.

CASE NO. CV13-02744-BLF (PSG)

**REPLY IN SUPPORT OF MOTION FOR
ORDER PERMITTING WITHDRAWAL**

Hearing Date: July 9, 2015, 9:00 AM
Dept. No.: 3, 5th Floor
Judge: Hon. Beth L. Freeman
Date Action Filed: June 14, 2013
Trial Date: June 8, 2015

1 Instead of addressing whether good cause exists for Colt Singer Bea's ("CSB") withdrawal
 2 request, Gerald North ("Mr. North") devotes Clear-View Technology's ("CVT") Opposition (Dkt.
 3 272) and Supplemental Opposition (Dkt. 276) to casting blame for the jury's verdict. As the Court
 4 likely suspects, CSB and Mr. North hold wildly divergent views of the "facts" North offers in
 5 opposing this Motion. As the veracity of those allegations is irrelevant to the instant motion, and as
 6 CSB's ethical obligations to CVT prevent it from substantively responding, CSB will reserve its
 7 response to such allegations at the appropriate time and forum.

8 Mr. North's Opposition brief does, however, put an exclamation point on CSB's argument
 9 that good cause exists for CSB's withdrawal. It is apparent that CSB's relationship with Mr. North
 10 and CVT have so deteriorated that is it impossible for CSB to continue as co-counsel with Mr. North
 11 or counsel for CVT. Moreover, assuming that Mr. North does in fact represent CVT's interests, his
 12 Opposition and Supplemental Opposition make clear that CVT's and CSB's interests have diverged
 13 dramatically. While not clearly argued in the Opposition, Mr. North intimates two points that
 14 warrant a response—that CSB abandoned CVT after trial and that CVT would be prejudiced were
 15 CSB permitted to withdraw now. As set forth below, neither is true. CSB should not be forced to
 16 continue representing a client with whom it has been told it cannot speak and as to whom Mr. North
 17 has made clear it is now adverse.

18 **A. North's Opposition Demonstrates Good Cause Exists To Permit Withdrawal**

19 California Rule of Professional Conduct 3-700(C)(3) permits withdrawal in circumstances
 20 where co-counsel makes it so impossible for a lawyer to do his or her job that it results in a disservice
 21 to the client. Mr. North is openly obstructing CSB's attorney-client relationship with CVT. Mr.
 22 North has instructed CVT not to speak with its own counsel and instructed CSB that it may not speak
 23 with its own client. Further, Mr. North attempted to instruct opposing counsel that it may not
 24 correspond with CSB attorneys and has excluded CSB from meet and confer discussions.

25 In addition, where there is a breakdown in communications with the client, as there is here, a
 26 court should grant a request to sever the relationship. *United States v. Carlos Adelzo-Gonzalez*, 768
 27 F.3d 772 (9th Cir. 2001). It is hard to imagine a more compelling demonstration that there has been
 28 an irreparable breakdown in the attorney-client relationship than North's wanton advertising—

1 purportedly on behalf of CVT—of a manufactured malpractice claim. Moreover, the complete
 2 deterioration of the attorney-client relationship, which is dominated and controlled by Mr. North, is
 3 also evident from Dr. Rosenoff's false¹ account of his conversation with CSB partner Benjamin
 4 Singer and affirmative efforts to publicly malign the firm. California Rule of Professional Conduct
 5 3-700(C)(1)(d) permits counsel to withdraw where the client's conduct renders it unreasonably
 6 difficult the firm to continue the representation.

7 These circumstances demonstrate that good cause exists to permit CSB's withdrawal.

8 **B. CSB Did Not Abandon CVT**

9 From the time the verdict came down through today, CSB has steadfastly prioritized CVT's
 10 interests and did not make the instant motion until *after* it had been informed by Mr. North that he
 11 had enlisted new assistance for CVT's representation.

12 Just two business days after the verdict, with Mr. North already making threatening innuendos
 13 to CSB's attorneys, CSB reached out to Mr. North via email requesting that they "connect tomorrow"
 14 about the plan going forward, and explaining that CSB's associates had been instructed "to stand
 15 down and rest up until" instructed otherwise. This simple email drew an explosive reaction from Mr.
 16 North, which made plain that CSB and North could not continue to effectively represent CVT's
 17 interests as co-counsel.

18 As a next step in attempting to ensure protection of CVT's interests, CSB reached out to its
 19 client directly on June 25, 2015. Dr. Stephen Rosenoff, a member of CVT's Board of Directors, he
 20 confirmed that Mr. North had instructed CVT not to communicate with CSB. Later that same day,
 21 Mr. North stated in writing, addressed to all of CSB's partners, that "CVT is my client," and stated
 22 that "I instruct you not to have any further contact with anyone associated with CVT." Mr. North
 23 also advised CSB's partners that he had, days prior, "began the process of making other
 24 arrangements" for representation. Mr. North further instructed opposing counsel, in a separate
 25 communication, to direct all correspondence to him and him alone. Two days later, Mr. North
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27 _____
 28 ¹ In the interest of not expanding any potential waiver of privilege occasioned by the Declarations of Gerald W. North
 and Dr. Stephen Rosenoff, CSB is bound to refrain from responding point-by-point to the inaccurate and defamatory
 accusations contained therein.

1 reiterated that he had enlisted other assistance on the post-trial motions. Based on Mr. North's
 2 representations, CSB reasonably believed he had made arrangements for other counsel.

3 Despite the breakdown, CSB has been consistent in its position that it is ready and willing to
 4 do whatever is necessary to efficiently transition the representation to other counsel. CSB has
 5 provided everything Mr. North requested post-trial to insure that CVT's interests are protected.

6 Mr. North acknowledges that Renee Bea has been made available to assist with CVT's fee
 7 and cost submissions. (Oppn. at 3:28-4:2.) Indeed, CSB's counsel advised Mr. North that Ms. Bea
 8 would interface with him regarding case-related matters, but that all inquiries or discussion regarding
 9 his malpractice threats should be directed to counsel from Long & Levit, LLP; CSB engaging with
 10 Mr. North regarding his threats and allegations would be unproductive.

11 **C. CSB's Withdrawal Will Not Prejudice CVT**

12 Mr. North was CVT's counsel long before CSB existed. He first chaired the trial, has
 13 described himself as CVT's "lead attorney" throughout the litigation, and controlled and directed the
 14 litigation from its inception. He is capable of addressing any and all substantive issues and motions
 15 in this post-trial phase. CSB also timely provided CVT with notice of its intent to withdraw on June
 16 26, 2015, well in advance of any post-trial deadlines, and *after* Mr. North represented that he had
 17 made "other arrangements" that excluded CSB. As noted above, CSB has diligently continued to
 18 accept service of and forward documents and has responded to Mr. North's requests for information.

19 Based on CVT's Opposition (Oppn. at 4:22), it is clear Mr. North has not actually made
 20 "other arrangements" for representation and, therefore, the point that CVT needs to retain local
 21 counsel is well-taken. A corporation may not self-represent and it is essential that CVT does not lose
 22 Mr. North unless and until it hires another lawyer to represent it. *Merco Constr. Engineers, Inc. v.*
 23 *Municipal Court*, 21 Cal. 3d 725 (1978); *In re Highly*, 465 F 2d 554, 555 (9th Cir. 1972).

24 Until CVT is able to retain local counsel, Civil Local Rule 11-5 (b) permits the Court to
 25 conditionally grant CSB leave to withdraw, relieving CSB of duties aside from those involving the
 26 service of documents. CSB requests the Court conditionally grant its motion to withdraw, relieving
 27 the firm of its duties aside from service obligations under Rule 5-11(b); order CVT to retain local
 28

1 counsel forthwith; and order that, once counsel has been retained, CSB's motion to withdraw is
2 granted. In the interim, CSB will accept service and forward papers to Mr. North.

3 **D. The Court Should Deny North's Attempt To Modify Its Engagement With CSB**

4 In Mr. North's Supplemental Opposition, he asks this Court, without any legal basis, to
5 modify the terms of CSB's engagement letter with CVT and expand the scope of CSB's services.
6 The terms of CSB's compensation are set forth in an engagement letter, and any dispute regarding
7 those terms, including any effort to judicially modify them, is explicitly subject to an alternative
8 dispute resolution provision. Moreover, CSB's engagement with CVT specifically excludes appellate
9 services, stating that "[t]he Firm will not represent Clear-View on any appeal...". Therefore, the
10 Court should reject Mr. North's unsupported requests to modify CSB's contractual agreement with
11 CVT.

12 **CONCLUSION**

13 For the above reasons, CSB respectfully requests that the Court conditionally grant its motion
14 to withdraw and that, until such time as CVT retains replacement local counsel, CSB's duties are
15 limited to acceptance of service and forwarding of documents. Further, CSB requests that the Court
16 order CVT to retain local counsel forthwith.

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18 Date: July 7, 2015

Respectfully submitted,

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COLT / SINGER / BEA LLP

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21 By: _____


22 Douglas W. Colt
Renee B. Bea
23 Douglas S. Tilley

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**[PROPOSED] ORDER GRANTING
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Having reviewed and considered Colt / Singer / Bea LLP's ("CSB") Motion for an Order Permitting Colt / Singer / Bea LLP to Withdraw as CVT's Counsel, and good cause appearing therefor, the Court HEREBY ORDERS that CSB be permitted to conditionally withdraw as counsel in this matter. Gerald D. W. North will continue to represent CVT, but is ordered to retain local counsel forthwith. Until such time CVT retains alternate counsel, CSB must accept service of, and forward, pleadings filed in this action, but is relieved of all other duties. The Court's records and ECF docket shall be updated to reflect these changes.

IT IS SO ORDERED.

Dated:

**HON. BETH LABSON FREEMAN
UNITED STATES DISTRICT JUDGE**